UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
NORTHERN DIVISION

SOUTHERN DISTRICT OF MISSISSIPPI
FILED
MAR 12 2014
ARTHUR JOHNSTON
BY ________ DEPUTY

CRAIG ALEXANDER, ROBERT ANDERSON, ORVES BAKER, ADRIAN BELL, RANDLE SCOTT BLYTHE, MICHAEL BOKAMPER, CALVIN CHARLES BOLAR, LEON BRANDON, JR., JEREMY BREWER, LEE ALEXANDER BROOKS, JOHNNY LEE BROWN, SACORY BROWN, SHAWN BRUCE, VARICO BUSH, DERRECO BYNUM, RONALD COLEMAN, JAMES E. CORLEY, and All Others Similarly Situated **Plaintiffs**

v. **Civil Action No.** 3:14cv 208 HTW-LRA

MISSISSIPPI DEPARTMENT OF CORRECTIONS, CHRISTOPHER B. EPPS (in his Official Capacity as Commissioner of Corrections), MISSISSIPPI PAROLE BOARD, and STEVE PICKETT (in his Official Capacity as Chair of the Mississippi Parole Board) **Defendants**

COMPLAINT

Craig Alexander and each of the persons named above as Plaintiffs, assert the following as their Complaint herein, on their own behalf individually and also as class representatives of all others similarly situated (as defined below):

Jurisdiction and Venue

1. This action, seeking declaratory and injunctive relief against Departments and Officials of the State of Mississippi, arises out of violations of the Due Process Clause of the United States Constitution, giving rise in turn to subject matter jurisdiction

in this Court pursuant to 28 U.S.C. § 1331, and 42 U.S.C. § 1983.

2. The statewide and systematic policy decisions and administrative actions which have caused those violations, in failing and refusing to provide notice and an opportunity to be heard by each Plaintiff and each class member concerning their statutory right to a parole hearing, were made and implemented by the Defendants at and through their respective offices in Jackson, Hinds County, Mississippi, making venue in this District and Division proper within the meaning of 28 U.S.C. § 1391.

Parties

3. Plaintiff Craig Alexander, a citizen of the United States, is now an adult inmate under the custody of the Mississippi Department of Corrections ("MDOC"), as a result solely of his conviction in Desoto County, Mississippi, of residential burglary, for which he was sentenced to serve twenty-five years of incarceration. His resulting custody by the MDOC began on or about June 2, 2011, and continues to this date. He has never been provided with any notice or information that he has any legal right or opportunity to apply for parole, or to attend or be granted any hearing for any consideration by the Defendant Mississippi Parole Board of any opportunity for an earlier restoration of his liberty through parole. His MDOC Inmate Number is 167927. Exhibit 1 hereto is a duplicate of Plaintiff Alexander's "Inmate Time Sheet," prepared by Defendant MDOC and reflecting no acknowledgment or assignment of any "Parole Date" applicable to him.

4. Plaintiff Robert Anderson, a citizen of the United States, is now an adult inmate under the custody of the MDOC, as a result solely of his conviction in Hinds County, Mississippi, of residential burglary, for which he was sentenced to serve five and one half years of incarceration. His resulting custody by the MDOC began on or about January 20, 2011, and continues to this date. He has never been provided with any notice or information that he has any legal right or opportunity to apply for parole, or to attend or be granted any hearing for any consideration by the Defendant Mississippi Parole Board of any opportunity for an earlier restoration of his liberty through parole. His MDOC Inmate Number is 153440. Exhibit 2 hereto is a duplicate of Plaintiff Anderson's "Inmate Time Sheet," prepared by Defendant MDOC and reflecting no acknowledgment or assignment of any "Parole Date" applicable to him.

5. Plaintiff Orves Baker, a citizen of the United States, is now an adult inmate under the custody of the MDOC, as a result solely of his conviction in Jefferson Davis County, Mississippi, of residential burglary, for which he was sentenced to serve 4 years of incarceration. His resulting custody by the MDOC began on or about September 17, 2009, and continues to this date. He has never been provided with any notice or information that he has any legal right or opportunity to apply for parole, or to attend or be granted any hearing for any consideration by the Defendant Mississippi Parole Board of any opportunity for an earlier restoration of his liberty through parole.

His MDOC Inmate Number is L5546. Exhibit 3 hereto is a duplicate of Plaintiff Baker's "Inmate Time Sheet," prepared by Defendant MDOC and reflecting no acknowledgment or assignment of any "Parole Date" applicable to him.

6. Plaintiff Adrian Bell, a citizen of the United States, is now an adult inmate under the custody of the MDOC, as a result solely of his conviction in Lee County, Mississippi, of residential burglary, for which he was sentenced to serve 5 years of incarceration. His resulting custody by the MDOC began on or about July 30, 2012, and continues to this date. He has never been provided with any notice or information that he has any legal right or opportunity to apply for parole, or to attend or be granted any hearing for any consideration by the Defendant Mississippi Parole Board of any opportunity for an earlier restoration of his liberty through parole. His MDOC Inmate Number is N5031. Exhibit 4 hereto is a duplicate of Plaintiff Bell's "Inmate Time Sheet," prepared by Defendant MDOC and reflecting no acknowledgment or assignment of any "Parole Date" applicable to him.

7. Plaintiff Randle Scott Blythe, a citizen of the United States, is now an adult inmate under the custody of the MDOC, as a result solely of his conviction in Desoto County, Mississippi, of residential burglary, for which he was sentenced to serve 25 years of incarceration. His resulting custody by the MDOC began on or about December 14, 2011, and continues to this date. He has never been provided with any notice or information that he has any legal right or opportunity to apply for parole, or to

attend or be granted any hearing for any consideration by the Defendant Mississippi Parole Board of any opportunity for an earlier restoration of his liberty through parole. His MDOC Inmate Number is 173486. Exhibit 5 hereto is a duplicate of Plaintiff Blythe's "Inmate Time Sheet," prepared by Defendant MDOC and reflecting no acknowledgment or assignment of any "Parole Date" applicable to him.

8. Plaintiff Michael Bokamper, a citizen of the United States, is now an adult inmate under the custody of the MDOC, as a result solely of his conviction in Desoto County, Mississippi, of residential burglary, for which he was sentenced to serve three years of incarceration. His resulting custody by the MDOC began on or about June 21, 2012, and continues to this date. He has never been provided with any notice or information that he has any legal right or opportunity to apply for parole, or to attend or be granted any hearing for any consideration by the Defendant Mississippi Parole Board of any opportunity for an earlier restoration of his liberty through parole. His MDOC Inmate Number is 103381. Exhibit 6 hereto is a duplicate of Plaintiff Bokamper's "Inmate Time Sheet," prepared by Defendant MDOC and reflecting no acknowledgment or assignment of any "Parole Date" applicable to him.

9. Plaintiff Calvin Charles Bolar, a citizen of the United States, is now an adult inmate under the custody of the MDOC, as a result solely of his conviction in Lamar County, Mississippi, of residential burglary, for which he was sentenced to serve ten years of incarceration. His resulting custody by the MDOC began on or about December

16, 2009, and continues to this date. He has never been provided with any notice or information that he has any legal right or opportunity to apply for parole, or to attend or be granted any hearing for any consideration by the Defendant Mississippi Parole Board of any opportunity for an earlier restoration of his liberty through parole. His MDOC Inmate Number is 47337. Exhibit 7 hereto is a duplicate of Plaintiff Bolar's "Inmate Time Sheet," prepared by Defendant MDOC and reflecting no acknowledgment or assignment of any "Parole Date" applicable to him.

10. Plaintiff Leon Brandon, Jr., a citizen of the United States, is now an adult inmate under the custody of the MDOC, as a result solely of his conviction in Chickasaw County, Mississippi, of residential burglary, for which he was sentenced to serve ten years of incarceration. His resulting custody by the MDOC began on or about February 24, 2011, and continues to this date. He has never been provided with any notice or information that he has any legal right or opportunity to apply for parole, or to attend or be granted any hearing for any consideration by the Defendant Mississippi Parole Board of any opportunity for an earlier restoration of his liberty through parole. His MDOC Inmate Number is K2713. Exhibit 8 hereto is a duplicate of Plaintiff Brandon's "Inmate Time Sheet," prepared by Defendant MDOC and reflecting no acknowledgment or assignment of any "Parole Date" applicable to him.

11. Plaintiff Jeremy Brewer, a citizen of the United States, is now an adult inmate under the custody of the MDOC, as a result solely of his conviction in

Noxubee County, Mississippi, of residential burglary, for which he was sentenced to serve ten years of incarceration. His resulting custody by the MDOC began on or about March 26, 2013, and continues to this date. He has never been provided with any notice or information that he has any legal right or opportunity to apply for parole, or to attend or be granted any hearing for any consideration by the Defendant Mississippi Parole Board of any opportunity for an earlier restoration of his liberty through parole. His MDOC Inmate Number is 147931. Exhibit 9 hereto is a duplicate of Plaintiff Brewer's "Inmate Time Sheet," prepared by Defendant MDOC and reflecting no acknowledgment or assignment of any "Parole Date" applicable to him.

12. Plaintiff Lee Alexander Brooks , a citizen of the United States, is now an adult inmate under the custody of the MDOC, as a result solely of his conviction in Adams County, Mississippi, of residential burglary, for which he was sentenced to serve twenty years of incarceration. His resulting custody by the MDOC began on or about July 31, 2008, and continues to this date. He has never been provided with any notice or information that he has any legal right or opportunity to apply for parole, or to attend or be granted any hearing for any consideration by the Defendant Mississippi Parole Board of any opportunity for an earlier restoration of his liberty through parole. His MDOC Inmate Number is 37279. Exhibit 10 hereto is a duplicate of Plaintiff Brooks' "Inmate Time Sheet," prepared by Defendant MDOC and reflecting no acknowledgment or assignment of any "Parole Date" applicable to him.

13. Plaintiff Johnny Lee Brown, a citizen of the United States, is now an adult inmate under the custody of the MDOC, as a result solely of his conviction in Scott County, Mississippi, of residential burglary, for which he was sentenced to serve twenty-two years of incarceration. His resulting custody by the MDOC began on or about October 10, 2002, and continues to this date. He has never been provided with any notice or information that he has any legal right or opportunity to apply for parole, or to attend or be granted any hearing for any consideration by the Defendant Mississippi Parole Board of any opportunity for an earlier restoration of his liberty through parole. His MDOC Inmate Number is L3424. Exhibit 11 hereto is a duplicate of Plaintiff Johnny Lee Brown's "Inmate Time Sheet," prepared by Defendant MDOC and reflecting no acknowledgment or assignment of any "Parole Date" applicable to him.

14. Plaintiff Sacory Brown, a citizen of the United States, is now an adult inmate under the custody of the MDOC, as a result solely of his conviction in Forrest County, Mississippi, of residential burglary, for which he was sentenced to serve eighteen years of incarceration. His resulting custody by the MDOC began on or about June 4, 2012, and continues to this date. He has never been provided with any notice or information that he has any legal right or opportunity to apply for parole, or to attend or be granted any hearing for any consideration by the Defendant Mississippi Parole Board of any opportunity for an earlier restoration of his liberty through parole. His MDOC Inmate Number is 176189. Exhibit 12 hereto is a duplicate of Plaintiff Sacory Brown's

"Inmate Time Sheet," prepared by Defendant MDOC and reflecting no acknowledgment or assignment of any "Parole Date" applicable to him.

15. Plaintiff Shawn Bruce, a citizen of the United States, is now an adult inmate under the custody of the MDOC, as a result solely of his conviction in Wilkinson County, Mississippi, of residential burglary, for which he was sentenced to serve five years of incarceration. His resulting custody by the MDOC began on or about February 13, 2012, and continues to this date. He has never been provided with any notice or information that he has any legal right or opportunity to apply for parole, or to attend or be granted any hearing for any consideration by the Defendant Mississippi Parole Board of any opportunity for an earlier restoration of his liberty through parole. His MDOC Inmate Number is 89888. Exhibit 13 hereto is a duplicate of Plaintiff Bruce's "Inmate Time Sheet," prepared by Defendant MDOC and reflecting no acknowledgment or assignment of any "Parole Date" applicable to him.

16. Plaintiff Varico Bush, a citizen of the United States, is now an adult inmate under the custody of the MDOC, as a result solely of his conviction in Oktibbeha County, Mississippi, of residential burglary, for which he was sentenced to serve twenty years of incarceration. His resulting custody by the MDOC began on or about January 30, 2009, and continues to this date. He has never been provided with any notice or information that he has any legal right or opportunity to apply for parole, or to attend or be granted any hearing for any consideration by the Defendant Mississippi

Parole Board of any opportunity for an earlier restoration of his liberty through parole. His MDOC Inmate Number is 146118. Exhibit 14 hereto is a duplicate of Plaintiff Bush's "Inmate Time Sheet," prepared by Defendant MDOC and reflecting no acknowledgment or assignment of any "Parole Date" applicable to him.

17. Plaintiff Derreco Bynam, a citizen of the United States, is now an adult inmate under the custody of the MDOC, as a result solely of his conviction in Clay County, Mississippi, of residential burglary, for which he was sentenced to serve five years of incarceration. His resulting custody by the MDOC began on or about July 22, 2011, and continues to this date. He has never been provided with any notice or information that he has any legal right or opportunity to apply for parole, or to attend or be granted any hearing for any consideration by the Defendant Mississippi Parole Board of any opportunity for an earlier restoration of his liberty through parole. His MDOC Inmate Number is 124520. Exhibit 15 hereto is a duplicate of Plaintiff Bynam's "Inmate Time Sheet," prepared by Defendant MDOC and reflecting no acknowledgment or assignment of any "Parole Date" applicable to him.

18. Plaintiff Ronald Coleman, a citizen of the United States, is now an adult inmate under the custody of the MDOC, as a result solely of his conviction in Oktibbeha County, Mississippi, of residential burglary, for which he was sentenced to serve twenty-five years of incarceration. His resulting custody by the MDOC began on or about November 4, 2004, and continues to this date. He has never been provided with any

notice or information that he has any legal right or opportunity to apply for parole, or to attend or be granted any hearing for any consideration by the Defendant Mississippi Parole Board of any opportunity for an earlier restoration of his liberty through parole. His MDOC Inmate Number is 38825. Exhibit 16 hereto is a duplicate of Plaintiff Coleman's "Inmate Time Sheet," prepared by Defendant MDOC and reflecting no acknowledgment or assignment of any "Parole Date" applicable to him.

19. Plaintiff James Corley, a citizen of the United States, is now an adult inmate under the custody of the MDOC, as a result solely of his conviction in Forrest County, Mississippi, of residential burglary, for which he was sentenced to serve twelve years of incarceration. His resulting custody by the MDOC began on or about July 31, 2012, and continues to this date. He has never been provided with any notice or information that he has any legal right or opportunity to apply for parole, or to attend or be granted any hearing for any consideration by the Defendant Mississippi Parole Board of any opportunity for an earlier restoration of his liberty through parole. His MDOC Inmate Number is 177282. Exhibit 17 hereto is a duplicate of Plaintiff Corley's "Inmate Time Sheet," prepared by Defendant MDOC and reflecting no acknowledgment or assignment of any "Parole Date" applicable to him.

20. The Defendant Mississippi Department of Corrections, which has statutory power and responsibility to determine and enforce the terms under which each such Plaintiff Inmate (and each class member inmate) is required to remain incarcerated, as

well as the terms and date through or as of which each such inmate is entitled to be released from incarceration, may be served with process at its principal headquarters and executive offices, located at 723 North President Street, Jackson, Hinds County, Mississippi 30202.

21. The Defendant Christopher B. Epps, sued here in his official capacity only, is the Commissioner and Chief Executive Officer of the Defendant MDOC, with statutory responsibility for assuring that MDOC enforces and implements Mississippi statutes affecting the time periods and terms during which each such inmate is incarcerated by MDOC, including the statutory responsibility to oversee the release of each such inmate from incarceration according to such statutes, and the accurate and lawful communication to such inmates of their statutory and administrative rights (including their statutory right to a parole hearing and the timing thereof). Defendant Epps also may be served with process at his offices within the the principal headquarters and executive offices of MDOC, located at 723 North President Street, Jackson, Hinds County, Mississippi 30202.

22. The Defendant Mississippi State Parole Board, which under *Mississippi Code Ann.* § 47-7-3(3) is required "by rules and regulations (to) establish a method of determining a tentative parole hearing date for each eligible offender taken into the custody" of MDOC and to determine and communicate that parole hearing date as to each such offender "within ninety (90) days after (MDOC) has assumed custody of the offender," may be served with process at its headquarters offices at 660 North Street,

Suite 100A, in Jackson, Mississippi.

23. Defendant Steve Pickett, sued here in his official capacity only, is the incumbent Chairman of the Mississippi State Parole Board, and is thereby statutorily responsible for causing the Parole Board staff and members to perform the statutory duties noted above, and otherwise to provide notice of any hearing rights to, and an opportunity to be heard before such Board by, each inmate statutorily eligible for a hearing to determine whether they will have the benefit of early release, and thus a restoration of their liberty, through the granting of parole. He too may be served with process at that Board's headquarters offices at 660 North Street, Suite 100A, in Jackson, Mississippi.

Class Definition

24. Each of the Plaintiffs brings this action on behalf of themselves and also as adequate representatives of all class members constituting all others similarly situated, pursuant to Rule 23 of the Federal Rules of Civil Procedure, and propose that the following class of members be certified by the Court herein:

> All inmates now under the actual physical custody of the MDOC (and all inmates who may be tendered to MDOC custody during the pendency of this proceeding as a result of any conviction prior to July 1, 2014), as a result of a conviction of residential burglary (as defined herein), who (a) have not been notified of any opportunity to attend a hearing before the Defendant Parole Board for consideration on any particular date by that Board of the granting of parole as to that inmate, and (b) who are not also now incarcerated as a result of a conviction under any of the *other* statutes (*other* than residential burglary) a conviction for which makes an inmate statutorily ineligible for parole, and thus for a parole

hearing, under the terms of *Mississippi Code Ann.* § 47-7-3(1).

25. All proposed class members have a common and identical interest in each of the common questions of statutory law set forth below, and all have suffered the same identical deprivation by the same Defendants in having been deprived of notice and an opportunity to be heard with respect to their State statutory parole hearing rights, such that common questions of law and fact predominate over any questions affecting only individual class members.

26. The members of the class are so numerous that joinder is impracticable. Plaintiffs' co-counsel received in 2013 from the Defendant MDOC in previous litigation on behalf of a single inmate an MDOC-generated printout of over 4,000 inmates now in custody for convictions of residential burglary. The Defendants indeed can readily determine the persons who are within the class from their own computerized records of their current inmates, including the data through which they routinely generate by computer the "Inmate Time Sheets" of the kind reflected on the Exhibits hereto.

27. The claims of the representative Plaintiffs are typical of the claims of the class members, in that each Plaintiff and also each class member has precisely the same liberty-related stake in causing the Defendants lawfully to interpret and apply each of the statutory terms and rights (and lawfully to provide notice to each inmate of the application to them of such rights and an opportunity to be heard thereon), for the reasons cited above as to each such Plaintiff and reflected on the Exhibits hereto. Having expressly affirmed

their willingness to participate in such a class action, and having retained competent and experienced counsel for that purpose, the Plaintiffs will fairly and adequately protect the interests of the class as a whole.

28. The Defendants have acted uniformly as to all Plaintiffs and proposed class members in denying each of them, on the same purported legal ground, notice and an opportunity to be heard with respect to the parole hearing rights of each as described below, such that the Defendants' defenses to the claims asserted herein can be expected to be common and typical as to the entire class. Because of the commonality of that uniform treatment, questions of law and fact common to class members predominate over any questions affecting only individual class members.

Statutory Background and Defendants' Conduct

29. For the purpose of that class definition, and for all purposes for which the term "residential burglary" is used in this Complaint, that term shall have the same meaning as the statutory elements of the three different "burglary" statutes now codified in Mississippi's criminal code defining the substantive elements of crimes, namely *Mississippi Code Ann.* §§ 97-17-23, 97-17-25, and 97-17-29. *Mississippi Code Ann.* § 97-17-23(1) defines the substantive crime of burglary as follows (as §97-17-23(2) provides only for an enhanced sentence under certain circumstances, but does not define any element required for a conviction): "Every person who shall be convicted of breaking and entering the dwelling house or inner door of such dwelling house of another, whether

armed with a deadly weapon or not, and whether there shall be at the time some human being in such dwelling house or not, with intent to commit some crime therein, shall be punished by commitment to the custody of the Department of Corrections for not less than three (3) years nor more than twenty-five (25) years." *Mississippi Code Ann.* § 97-17-25, in turn, defines the substantive crime of burglary as follows: "Every person who, being in the dwelling house of another, shall commit a crime, and shall break any outer door, or any other part of said house, to get out of the same, shall be guilty of burglary, and be imprisoned in the penitentiary not more than ten years." *Mississippi Code Ann.* § 97-17-29, finally, defines the substantive crime of burglary as follows: "Every person who, being lawfully in the dwelling house of another, shall break an inner door of the same house, with intent to commit a crime, shall be guilty of burglary, and imprisoned in the penitentiary not more than ten years." For all periods since at least July 1, 1996, those statutes together have provided the exclusive meanings for lawfully defining the crime of residential burglary in Mississippi.

30. Conviction of the crime of residential burglary in Mississippi does not require proof, or any finding by any jury, that any person other than the defendant was present within the subject residence at the time of the crime, or that any person apprehended a threat of violence or was the victim of violence of any kind.

31. No conviction for residential burglary in Mississippi, therefore, amounts to or demonstrates any jury finding that any violent act, or even any apprehension of any

violent act, has occurred or has been committed by any such convicted defendant.

32. Since 1996, there has been, and is now, no substantive crime in Mississippi law that is accurately defined or described as the crime of "burglary of an occupied dwelling," since the presence of a person within the subject dwelling is not an element of the crime of residential burglary.

33. The Plaintiffs and class members have been, and are being, denied by the Defendants their state statutory right to any parole hearing on the ground that, because they were convicted of residential burglary, they have been convicted of "burglary of an occupied dwelling" within the meaning of the statute defining eligibility for parole, namely *Mississippi Code Ann.* § 47-7-3(1), under Subsection "h" of which (in relevant part) other inmates convicted of "nonviolent crimes" are eligible for parole, for which purpose "nonviolent crime" (for which parole is otherwise often available) means "a felony other than homicide, robbery, manslaughter, sex crimes, arson, *burglary of an occupied dwelling*, aggravated assault, kidnapping, felonious abuse of vulnerable adults, felonies with enhanced penalties, the sale or manufacture of a controlled substance under the Uniform Controlled Substances Law, felony child abuse, or exploitation or any crime under (specified statutes concerning child abuse)." (Emphasis added).

34. The Defendants have maintained an unlawful policy and practice of treating and regarding the Plaintiffs and class members as ineligible for any opportunity for amy parole hearing because the Defendants for years have regarded and treated a

conviction of residential burglary as outside of the definition of "nonviolent crime," because they in turn incorrectly treat residential burglary as constituting "burglary of an occupied dwelling" (and therefore excluded from the statutory definition of "nonviolent crime" under the language quoted above). The Defendants' policy and practice is contrary to and in violation of, and is not authorized by, any Mississippi statute.

35. Pursuant to and as a part of the same unlawful policy and practice, the Defendants have systematically denied the Plaintiffs and all class members their statutory right to be regarded as eligible for a parole hearing, to be given notice and an opportunity to be heard by the Defendant Parole Board, and to hear the evidence against each of them and an opportunity to present their own evidence regarding whether or not they have each earned parole (and thus the opportunity to have their liberty substantially restored).

36. As a vital part of the statutory regime by which Mississippi has elected to offer certain inmates a parole hearing and resulting opportunities for parole, *Mississippi Code Ann.* § 47-7-3(3) imposes a *mandatory requirement* on the Defendants, and in particular on the Defendant Parole Board and Defendant Pickett as its Chief Executive Officer, affirmatively to determine and fix a "tentative parole hearing date for each eligible offender" within ninety days of coming within the custody of MDOC, through the following relevant statutory language (to which the emphasis below has been added):

> The State Parole Board *shall,* by rules and regulations, establish a method of determining a tentative *parole hearing date* for each eligible offender taken into the custody of the Department of Corrections. The tentative parole hearing date *shall* be determined within ninety (90) days after the

department has assumed custody of the offender.

37. Through adopting that statutory language, the Mississippi Legislature has decided not to make discretionary with the Defendants, but to make mandatory, the Defendants' assignment of a specific parole hearing date to each and every inmate who, by virtue of the crime(s) for which he or she is incarcerated, is statutorily-eligible for consideration for parole and thus a hearing to determine whether or not they should be paroled.

38. It is not alleged here that the federal Due Process Clause requires that any Plaintiff or any class member be ultimately granted parole by the Defendants (after each receives notice of and participation in a full and fair hearing), or that any Mississippi parole statute by its terms violates the Due Process Clause. But when Mississippi has elected to impose on the Defendants by statute a *mandatory* duty to determine, within ninety days each inmate comes within the custody of the MDOC, which inmates are by statute eligible for a parole hearing, and a further *mandatory* duty to fix and determine within that same period a specific date for a hearing through which each such statutorily eligible inmate may hear the evidence for and against restoring their liberty through parole (and may present their own evidence as to whether they should be granted parole), Mississippi has elected to create a state statutory right so inherently and valuably related to each inmate's liberty interest that Mississippi has thereby created a liberty interest within the meaning and protection of the federal Due Process Clause, and is obligated

thereby to administer that mandatory duty through granting to each statutorily eligible inmate (including all Plaintiffs and all class members herein) a fair and adequate notice of a parole hearing date, and a fair and meaningful opportunity to prepare for and attend a parole hearing.

39. In depriving the Plaintiffs and class members administratively of any and all notice and any opportunity to be heard regarding their opportunity and eligibility for parole, the statutory right to a parole hearing established by statute in Mississippi has been rendered meaningless by the Defendants' extra-statutory conduct.

40. The Defendants' systematic refusal and failure to discharge their mandatory State statutory duties, causing deprivation of the Plaintiffs' and class members' notice and opportunity to be heard in a matter affecting their state-created opportunities to win a restoration of their liberty, violates the federal Due Process Clause.

41. In undertaking administration of the parole eligibility statutes and criteria set forth in *Mississippi Code Ann.* § 47-7-3, and in then affirmatively deciding systematically to deprive the Plaintiffs and class members of any notice of their statutory right and opportunity to apply for and prepare for a parole hearing on or by any particular date, and indeed in affirmatively deciding systematically to deprive the Plaintiffs and class members of any hearing with respect to their statutory right to seek parole, the Defendants have denied the Plaintiffs and class members their fundamental interest in having notice and an opportunity to be heard regarding their fundamental liberty interests,

in systematic violation both of Mississippi's parole statutes and of the Due Process Clause of the Fifth Amendment to the Constitution of the United States.

42. Such Due Process violations shall continue, and the Plaintiffs and class members shall be deprived of their parole hearing rights and thus their liberty interests, unless and until the Defendants are enjoined by this Court affirmatively to provide each Plaintiff and class member with specific and actual notice, actually communicated in clear written terms directly to each and every such individual, of a "Parole Date" as of which each may have an opportunity to seek parole, and otherwise a hearing date and a hearing through which they may each present his or her case for why their liberty should be substantially restored through the granting of parole.

43. In the absence of such a judicial injunction as to each Defendant herein, and in the absence of active and detailed court supervision of the administration of the resulting notice and hearing opportunity process, the Defendants shall continue not only to disregard the State definition of "residential burglary" in their administration of the Plaintiffs' and class members' parole hearing rights, but shall also continue to violate the Plaintiffs' and class members' rights under the Due Process Clause of the federal Constitution.

44. Declaratory and injunctive relief for the entire class is necessary for meaningful or effective relief to be realized for the violations set forth above, such that certification by the Court of such a class and class-wide relief from the Court are superior

to any other available method for fairly or efficiently adjudicating this controversy and restoring the liberty-related rights of class members.

45. Prior legal challenges to the Defendants' policies and conduct as described above, brought on behalf of individual inmates and not on behalf of a class of inmates, have proven to have been ineffective in causing the Defendants to conform their policies, practices and activities to the notice and hearing rights of the Plaintiffs and class members.

Relief Requested

Wherefore, on their own behalf and also on behalf of those similarly situated, the Plaintiffs respectfully move the Court to grant all declaratory and equitable relief which it finds to be justified by the evidence to be offered at the trial hereof, including the following relief:

1. Certification of a class with the membership described above, with notice and the remaining class administrative processes to be ordered as appropriate under FRCP Rule 23;

2. A Declaratory Judgment that the Plaintiffs and all Class Members have a federal constitutional and state statutory right to be provided by the Defendants with notice of a parole eligibility date, notice of a parole hearing date, and an opportunity to appear before the Defendant Parole Board for its consideration, in its discretion pursuant to state statutes, of

whether or not each such inmate should be granted parole;

3. A temporary and permanent mandatory injunction affirmatively ordering and requiring the Defendants to act, in detailed accordance with their mandatory duties under *Mississippi Code Ann.* § 47-7-3 and otherwise, promptly (a) to determine a parole hearing date for each of the Plaintiffs and class members, (b) to communicate that date in clear and written terms directly to each such inmate (as a part of each such inmate's periodic "Inmate Time Sheet" and otherwise), (c) to confirm and demonstrate to the Court that a reasonable parole hearing date has been assigned and communicated to each such inmate, and (d) to provide each such Plaintiff and class member with sufficient opportunity to prepare for and attend such a parole hearing before the Defendant Parole Board through which to hear and rebut evidence against them and to present evidence in their own behalf as to why their liberty should be restored through the granting of parole; and

4. An award of reasonable attorneys' fees and litigation expenses pursuant to 42 U.S.C. § 1988.

This the 12th day of March, 2014.

CRAIG ALEXANDER, et al.
By their Attorneys,
PIGOTT & JOHNSON, P.A.

By: ______________________
J. Brad Pigott

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